

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1511924
COUNTRY OF REFERENCE:	Albania
MEMBER:	Christopher Smolicz
DATE:	7 April 2017
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 07 April 2017 at 10:14am

CATCHWORDS

Refugee – Protection visa – Albania – Bogus document – Fraudulent passport – Forced marriage – Fleeing family violence – Credibility issues – Access to Schengen zone countries – Legal departure from Albania – Delay in applying for protection

LEGISLATION

Migration Act 1958, ss 5 (1), 36, 65, 91R, 91S, 91WA, 499

Migration Regulations 1994, Schedule 2

CASES

BGM16 v MIBP [2016] FCCA 2297

1.

2. Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

3. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
4. The applicant who claims to be a citizen of Albania, applied for the visa [in] March 2014 and the delegate refused to grant the visa [in] August 2015.
5. On 31 August 2015 the applicant applied to the Tribunal to review the delegate's decision. The applicant provided the Tribunal with a copy of the delegate's decision refusing to grant her a protection visa.
6. The applicant appeared before the Tribunal on 21 March 2017 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Albanian and English languages. The applicant was represented in relation to the review by her registered migration agent.

RELEVANT LAW

7. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.

REFUGEE CRITERION

8. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
10. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

12. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
13. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
14. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
15. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
16. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

COMPLEMENTARY PROTECTION CRITERION

17. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
18. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or

inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.

19. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CIRCUMSTANCES PREVENTING THE GRANT OF THE VISA

20. Under s.65(1) of the Act, the Minister (or the Tribunal on review) must refuse to grant a visa if the grant is prevented by s.91WA. Section 91WA(1) requires the Minister to refuse to grant a protection visa to an applicant who provides a bogus document as evidence of their identity, nationality or citizenship, or has destroyed or disposed, or caused the destruction or disposal of, documentary evidence of their identity, nationality or citizenship. However, that requirement will not apply if the applicant has a reasonable explanation for the provision, destruction or disposal, and either provides relevant documentary evidence or has taken reasonable steps to provide such evidence: s.91WA(2). Section 91WA and the definition of 'bogus document' are extracted in the attachment to this decision. The provisions of s.91WA of the Act were introduced into the Act with effect from 18 April 2015 and apply to all applications currently before the Tribunal as at that date,¹ including this application.

SECTION 499 MINISTERIAL DIRECTION

21. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.
22. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

23. Background

24. The applicant arrived in Australia [in] March 2013 [and] disembarked at [named] Airport.
25. On arrival in Australia the applicant presented to Australian officials [a Country 1] passport [number] which was issued in the name of [Alias A] born [on date]. The applicant travelled to Australia as the holder of [a temporary visa] which was valid for a [time] stay in Australia.
26. [In] March 2014, after entering Australia in the false name of [Alias A] the applicant applied for a protection visa in the name of [applicant's name] DOB [date] and claimed to be a citizen of Albania. She presented an Albanian passport number [of different number] to the Department. The passport is issued in the [applicant's name] born on [date]. The applicant claims this is her true identity. The Albanian passport was issued [in] 2013 and is valid until [2023].

¹ Section 2 of the *Migration Amendment (Protection and Other Measures) Act 2015*

27. In her protection visa application the applicant said that she travelled to Australia on an [Country 1] passport [number]. The applicant subsequently provided the Department with the [Country 1] passport [number] claiming it to be fraudulent.
28. The Department's Document Examination Unit confirmed that the [Country 1] Passport [number] is a legitimately manufactured document that has been fraudulently altered.
29. The Department accepted the applicant's Albanian passport as evidence of her identity for the purpose of the protection visa application.

30. **Claims for protection**

31. The applicant claims she was born on [date] in [Town 1], Albania.
32. She was raised in a Muslim family whose religious values were strict. Her upbringing was difficult because she felt her parents' religion was not compatible with her lifestyle.
33. The Tribunal asked the applicant to provide more detail about why she considered her parents to be strict Muslims. The applicant said they follow traditional religious beliefs. They prayed five times a day. Before pray they would wash their hands and feet. They would observe Ramadan and celebrate Eid (Eid al-Fitr). Her mother would wear long clothing and a hijab when she attended the mosque or prayer. Her parents would regularly attend the mosque in [Town 1]. The Tribunal asked the applicant how often she would attend the mosque. The applicant said whenever her parents took her, mostly every week. The Tribunal asked the applicant if she knew the name of her local Mufti in [the Town 1] mosque. The applicant did not know the name.
34. The Tribunal notes that when she arrived in Australia she described her relationship status as "engaged". The Tribunal questioned the applicant about her relationship status. The applicant said she is now single.
35. The applicant said she fled Albania to avoid an arranged marriage in accordance with Islamic tradition to a man called [Mr B]. She became engaged against her wishes [in] October 2011. She had never met [Mr B] before this date. The day before the engagement her parents told her that they wanted her to marry [Mr B]. The applicant said that she told her parents she did not want to marry and her father hit her. Her parents told her that [Mr B] was a religious man and was the perfect man for her. She could not provide any more evidence about what was said.
36. The Tribunal asked the applicant to provide further evidence about [Mr B] and his family. The Tribunal found the applicant's answers vague and lacking in detail. For example the applicant claimed that [Mr B] was a "Haji Hoxh" which meant he was a senior person at the Mosque and had studied in [the Middle East].
37. She claimed she had visited [Mr B's] home on two or three occasions and would see him weekly. However when questioned she did not know [Mr B's] date of birth. She did not know his father's name and had not met his father. She was unable to provide [Mr B's] mother's name and after some time thought his mother's name was "[name]". She said that [Mr B] was married to another woman but had not met his wife and did not know her name. She said that [Mr B] had children but did not know their names. She said that [Mr B] had [siblings] but did not know their names.
38. The Tribunal found it concerning that the applicant claims to have been engaged to [Mr B] since October 2011 but could not provide basic information about his family.

39. The applicant provided photographs in support of the relationship. The Tribunal noted the photos were all taken in the same location. Tribunal asked the applicant what was the purpose of taking the photos.
40. The applicant said the photos depict her (wearing a hijab), her father, mother, her [Relative 1] and [Mr B]. The applicant said the photos were taken after the engagement when they were praying at the mosque in [Town 1]. The Tribunal referred the applicant to her earlier evidence and noted that her mother was not wearing a hijab in the photos. The Tribunal noted the photos appeared staged. There were no people in the Mosque. The photos depict her and [Mr B] praying together which did not reflect Islamic tradition where men and women pray separately in the Mosque. The applicant said that her mother was earlier wearing a hijab and had taken it off and they were in a small room that's why they were standing together.
41. The Tribunal questioned the applicant about her engagement and who attended from [Mr B's] family. The applicant said only his mother attended and she did not have any photos. The applicant could not provide any details about the engagement celebrations.
42. The Tribunal noted that from October 2011 to March 2012 she studied [a course] at [a university in] Albania. She completed one and half years of the five year course. The applicant said [Mr B] allowed her to study but she had to remain covered at the time.
43. The applicant said that [Mr B] was violent towards her. Her parents did not help her and told her to obey [Mr B]. They would argue about religion. [Mr B] wanted her to wear a hijab. She did not go to the police for help.
44. The applicant said that [Mr B] had another wife and the applicant was to be his second wife. Tribunal also noted that polygamy was illegal in Albania since 1923.²
45. The Tribunal has had regard to the applicant's [Relative 1's] statement, documents and photos provided in support of the application. The Tribunal however found the applicant's evidence about her engagement and relationship with [Mr B] lacking in credibility.
46. The Tribunal questioned the applicant about why she travelled to Australia.
47. The applicant said she had [specified relatives] who lived in [two places] in [Country 1]. In February 2013, her [Relative 1] organised for her to travel to [one of these places] to visit her [Relative 2] so she could escape from [Mr B]. The Tribunal asked the applicant how she arranged the trip. The applicant said that she applied for an Albanian passport which was issued in [2013]. She did not require a visa to travel to [Country 1] because Albanians' could travel for three months to Schengen zone countries.³ This was the first time that she had left Albania. The Tribunal had regard to the applicant's Albanian passport and notes that she travelled by plane to [a Country 1 airport] [in] February 2013 and arrived at Tirana airport [in] March 2013.

² Albania: Family, Society and Culture in the 20th Century by Andreas Hemming, Gentiana Kera, Enriketa Pandelejmoni, p 47 https://books.google.com.au/books?redir_esc=y&id=HfpTqhlSctMC&q=polygamy+#v=snippet&q=polygamy&f=false

³Albania is not included in the Schengen area. However, Albanian citizens who hold biometric passports are granted visa-free travel within Schengen zone countries as of 15 December 2010. Multiple entries are permitted, as long as the total period of stay does not exceed three months within a six month period See 'Q&A: Schengen Agreement' 2011, BBC News, 16 May <http://www.bbc.co.uk/news/world-europe-13194723> and 'Tension builds beneath calm after violence in Albania' 2011, The New York Times.

48. She did not inform her parents about the trip. Soon after arriving in [Country 1] she told her [Relative 2] what was happening and her [Relative 2] called her mother and told her that she was in [Country 1]. [In] March 2013 her [Relative 2] returned her to Albania.
49. The Tribunal notes that she was free to travel to any Schengen zone country for three months such as Germany or France. The Tribunal asked the applicant why she did not travel to another part of [Country 1] which was not associated with her family. The applicant said she was always with her relatives and had no freedom.
50. The Tribunal discussed with the applicant s.36(3) of the Act and asked the applicant if she considered applying for protection in a Schengen zone country. The applicant said that she did not because her [Relative 1] told her that she could not apply for protection in the European Union. The applicant said that France was anti-Muslim and referred the Tribunal to bomb explosions in 2016. The applicant said that [Mr B] would be able to locate her in Europe because he had an Albanian passport and could also travel to Schengen zone countries.
51. Country information confirms that although seeking asylum is not considered a valid reason to be granted entry into Schengen countries, Albanians can and do seek asylum at the border of a Schengen country and will not be refused entry. For example, in September 2016 the number of Albanian's seeking asylums in Germany rose to 2,250.⁴ Amnesty International reports that 20,000 Albanians have applied for asylum in the European Union countries during 2016 although the rates of success were very low.⁵
52. After she returned to Albania her [Relative 1] organised a false [Country 1] passport and false [Country 1] identity card and ticket and visa to Australia. The Tribunal questioned the applicant about the passport. The applicant admitted the passport she to enter Australia used was a false passport and her name was not [Alias A].
53. The Tribunal questioned the applicant about how she travelled to Australia. The applicant said she used her Albanian passport and travelled by plane [to Country 1]. She subsequently took the train to [Country 2]. She stayed in [Country 2] for a few days and then flew to Australia using the false [Country 1] passport.
54. The Tribunal noted at the hearing that it found it surprising that she would risk travelling to Australia on a false passport and assumed identity rather than attempt to apply for protection in a Schengen zone country where she could legally travel using her Albanian passport.
55. The Tribunal questioned the applicant why she waited almost 12 months in Australia before she applied for the protection visa in her real name. The applicant said after she arrived in Australia she spoke to an agent and decided to apply to the Department for an extension of the [temporary] visa which was issued in the false name.
56. The applicant claimed that she needed time before she applied for the protection visa because she wanted her [Relative 1] to send her evidence from Albania in support of her claim for protection.
57. The applicant claims she will face harm at the hands of her family and her prospective spouse because she refused to enter into an arranged marriage and she wishes to convert from Islam to Christianity.

⁴ Albanian Asylum-Seekers numbers in Germany rise again, 20 October 2016, *Balkan Insight* <http://www.balkaninsight.com/en/article/large-number-of-albanians-still-asking-for-asylum-in-germany-10-19-2016>

⁵ <https://www.amnesty.org/en/countries/europe-and-central-asia/albania/report-albania/>

58. The applicant claims she will be targeted in other European countries as any Albanian citizen may also travel to other European countries who are parties to the Schengen Agreement.
59. If she returns to Albania and refuses to marry a family blood feud will start and her family will be under constant threat.
60. The applicant said that since arriving in Australia she is learning about Catholicism and is reading the Bible. One day she would like to convert to Catholicism. The Tribunal questioned the applicant about her interest in Christianity. The applicant said she had a Christian friend when she was at school in Albania and would attend the local Catholic church. She could not recall the name of the church. The Tribunal asked if her parents objected her attending the Catholic church when she was a child. The applicant said she would attend during the school break. When asked how many times she has attended church she could not answer the question. When asked what she had learned about the Catholic faith the applicant said she was reading the Bible at home when she was not stressed. She has not been baptised since coming to Australia. She did not provide any evidence from a local priest or members of any congregation in support of her evidence. The Tribunal found the applicant's evidence about her desire to convert to the Catholic faith lacking in credibility.
61. The Tribunal asked if she had any relatives in Australia. The applicant said that she knew no one in Australia and her [Relative 1] arranged for her to travel to Australia. There was one person called [name] who lived in Australia who she met in 2009 in Albania. Her [Relative 1] kept in contact with this person on Facebook. She stayed with him a few days. She did not come to Australia to be with [this person].
62. The applicant said that since she arrived in Australia she has become pregnant. The child is due [in] August 2017. The Tribunal asked the applicant about circumstances of the pregnancy. The applicant said she met an Albanian man who was living in Australia. He promised to look after her. When she became pregnant he abandoned her. She does not know his whereabouts because he disappeared. She does not know if he is an Australian citizen or permanent resident. She only knows his first name to be "[name]". She could not provide any further information.
63. The Tribunal was provided with a report from [a] Clinical Psychologist dated [in] February 2016. According to the report the applicant undertook a self-report questionnaire the results of which were consistent with her stated symptoms of [symptoms listed]. [The psychologist] states that the applicant is suffering from severe psychological symptoms, which are unlikely to resolve if she has to leave Australia. The applicant said she is not on any medication and has seen the psychologist on two occasions. The Tribunal was not provided with an updated report.

64. *Country information*

65. Country information confirms that Albanian women emigrate for a variety of reasons that include poverty, lack of economic opportunities, improvement of career prospects, personal advancement, family reunion or to escape the constant surveillance of their local communities and social consequences of practices related to 'honour' and shame'. The role of women in Albanian society have historically regulated by traditional patriarchal rules and males occupy the dominant position in Albanian society.⁶
66. Country information provided by the applicant's agent suggests that about 100 Albanians travelled to the Middle East to join terrorist groups and that there is a rise in Islamic radicalism in Albania. The Tribunal notes however that article also confirms that Albania's

⁶ Article: Domestic Violence against Albanian Immigrant Women in Greece: Facing Patriarchy: Social Sciences; Margarita Poteyeva and Gabriela Wasileski 1 August 2016

government is taking action and initiated a crack-down on recruits and imprisoned imams who encourage young Albanians to embrace violent jihad. Ylli Gurra, the moderate Sunni cleric who presides over a prominent mosque in Tirana states “We [Albania] have always been proud of being a country where you can practice your beliefs as you see fit” and that members of his mosque still prefer the Albanian tradition of embracing the country’s religious diversity, sometimes even joining in the religious celebrations of their Orthodox and Catholic neighbours.” The country information confirms that although Albania has a majority-Muslim population it has a centuries-old tradition of religious tolerance and moderation:

67. The very idea of radical Islam still sits uneasily in a country that has always worn its religion lightly.

For centuries Albanians were an amicable mix of Sunni Muslims, Orthodox Christians and Roman Catholics, with a significant minority of Bektashis, a moderate Sufi Muslim sect that has its global headquarters in Albania. For nearly 50 years until the collapse of communism in 1990, the country’s Marxist leaders proclaimed Albania to be the world’s first atheist state, officially banning religious observances and persecuting imams and priests.⁷

68. The Tribunal noted that it was surprising that she provided a certificate dated [in] May 2013 from [an Islamic leader] certifying that she is a follower of Islam. The applicant claimed that she went to [location] rather than go to her local Mosque to obtain the certificate because the [Mosque] had the official records.

IS THE GRANT OF THE VISA PREVENTED BY S.91WA?

69. *Did the applicant provide a bogus document as evidence of her identity?*

70. The issue in this case is whether the grant of the visa is prevented by s.91WA because the applicant has provided a bogus document as evidence of her identity, nationality or citizenship, without reasonable excuse.
71. The Tribunal wrote to the applicant before the hearing and advised her that although the delegate in this matter made no findings in relation to s.91WA the Tribunal will be raising the issue with her at the hearing.
72. The Tribunal explained to the applicant that according to her evidence she travelled to Australia on [a false Country 1] passport in the false name of [Alias A].
73. The Tribunal explained to the applicant that she provided a bogus document namely the [Country 1] passport in the false name of [Alias A] as evidence of her identity when she arrived in Australia.
74. Tribunal explained to the applicant that because she provided a bogus document as evidence of her identity, the Act would require the Tribunal to refuse her application for a protection visa in the absence of a reasonable explanation for providing the bogus document.

In Albania, concerns over the Islamic State’s emergence; The Washington Post | Published: June 11, 2016 <https://www.stripes.com/news/europe/in-albania-concerns-over-the-islamic-state-s-emergence-1.414273#.WNHUuTFJmJA> pages 5 & 8

⁷*In Albania, concerns over the Islamic State’s emergence*; The Washington Post | Published: June 11, 2016 <https://www.stripes.com/news/europe/in-albania-concerns-over-the-islamic-state-s-emergence-1.414273#.WNHUuTFJmJA>

75. The applicant said that she did not have any other options to run away from the issues she was having in her life. She tried to move to [Country 1] but her parents found out.
76. The Tribunal notes that she had a valid Albania passport on which she could have travelled.
77. The applicant said that as far as she knows Albanians cannot easily enter to Australia and her [Relative 1] decided that she should come to Australia. The Tribunal referred the applicant to her earlier evidence and noted that she could travel to any Schengen zone country without a visa. The applicant said that she was only able to travel in Europe and not to Australia.
78. The Tribunal has had regard to the applicant's evidence and finds that her name is not [Alias A] and that [in] March 2013 she entered Australia on an [Country 1] passport [number] in the false name of [Alias A].
79. The Tribunal finds that the applicant has presented a bogus document as evidence of her identity when she arrived in Australia.
80. The Tribunal finds the [Country 1] passport [number] to be a bogus document because the Tribunal reasonably suspects that the document purports to have been, but was not, issued in respect of the applicant.
81. The terms of s.91WA do not specify the context in which that provision will be triggered. There is no express limitation as to whom the bogus documents must have been provided (such as the Department of Immigration or the Tribunal), or whether they must have been provided in the context of the current protection visa application. On its face, it appears that the section could be enabled by the past provision of bogus documents or destruction of documents, unrelated to the application at hand. This was the interpretation applied by the Federal Circuit Court in *BGM16 v MIBP*,⁸ holding that s.91WA will have application to bogus documents which are provided by applicants as evidence of their identity, nationality or citizenship, in relation to past visa applications or upon their arrival in Australia.⁹ In this case, the applicant's past provision of a false passport upon entering Australia, and in two subsequent tourist visa applications and a student visa application was sufficient to trigger the operation of s.91WA. The Court was of the view that, having regard to the ordinary meaning of the provision and taking account of its statutory context and purpose, there was no warrant for reading in a temporal limitation to the provision.¹⁰
82. The Tribunal also notes that bogus documents considered in *BGM16 v MIBP* were provided by the applicant in relation to previous visa applications made prior to 18 April 2015. Therefore, on this interpretation of s.91WA there is no issue in relation to the application of the provision to bogus documents provided before the provision came into effect.

83. *Does the applicant have a reasonable explanation for providing the bogus document?*

⁸ *BGM16 v MIBP* [2016] FCCA 2297 (Judge Street, 2 September 2016).

⁹ In this case, the applicant entered Australia on a visitor visa using a false Greek passport, which he then used when applying for two subsequent tourist visas and a student visa. The Tribunal found that the Greek passport was a bogus document and that the applicant had provided the bogus document as evidence of his identity, nationality, and citizenship. The Tribunal considered that the applicant did not have a reasonable explanation for providing the bogus document and that s.91WA(1) applied to prevent the grant of the visa.

¹⁰ *BGM16 v MIBP* [2016] FCCA 2297 (Judge Street, 2 September 2016) at [32]-[33].

84. The applicant claimed that she had to use the false [Country 1] passport because she did not have any other options to escape from persecution in Albania. The applicant claims she attempted unsuccessfully to escape to [Country 1]. She claims that her family and [Mr B] would be able to locate her in Europe where Albanians can freely travel. She claims it was difficult for Albanians to obtain a visa to travel to Australia and therefore she had to use the [Country 1] passport issued in a false name.
85. The Tribunal has had regard to the nature and quality of the applicant's explanation for having provided a bogus document as evidence of her identity. For the following reasons the Tribunal is not satisfied that the applicant has a reasonable explanation for providing a bogus document.
- The Tribunal found the applicant's evidence about her relationship with [Mr B] and her attempts to escape from Albania lacking in credibility, vague and unconvincing. The Tribunal does not accept the applicant was forced by her parents to enter into an engagement with a man called [Mr B] who was a "Haji Hoxh". The Tribunal does not accept the applicant's claim that she attempted to escape to [Country 1] in February 2013 but was sent back to Albania by her [Relative 2]. The Tribunal does not accept the applicant's claims that she had to use a false [Country 1] passport to escape to Australia because [Mr B] and/or her family would find her in Europe. The Tribunal does not accept the applicant's claim that if she returns to Albania and refuses to marry a family blood feud will start and her family will be under constant threat.
 - The Tribunal finds that this is not a situation where the applicant did not have a travel document or was denied travel documents by the authorities in Albania and was left with no option but to obtain a false passport to escape from Albania.
 - The Tribunal finds the applicant did have a valid biometric Albania passport which was issued in [2013] enabling her to legally depart Albania. She was in possession of a valid Albanian passport before she arrived in Australia.
 - The Tribunal has considered the applicant's claim that she thought it was difficult for Albanians to obtain a visa to travel to Australia. The Tribunal finds however that the applicant made no attempt to apply for a valid Australian visa using her Albanian passport.
 - The applicant's Albanian passport permitted her to travel to any of the 26 Schengen zone countries without a visa. She was able to use her Albanian passport to depart Albania in February 2013 and again in March 2014. She travelled to [Country 1] and [Country 2] and did not apply for protection despite her claim that she feared persecution in Albania.
 - The Tribunal has had regard to the applicant's evidence that after arriving in Australia she extended the [temporary] visa which was issued in the false name to enable her to continue to remain in Australia. The Tribunal does not accept that it was reasonable for the applicant to claim that she had no option but to use a bogus document to enable her to apply for asylum in Australia when she waited for 12 months before applying for protection. The Tribunal would have expected the applicant to apply for protection as soon as she arrived in Australia rather than risk extending the Australia [temporary] visa which was issued in the false name. In this regard, the Tribunal is concerned that the applicant would continue to use and rely on the bogus document as evidence of her identity for about 12 months after arriving in Australia.
86. In conclusion, the Tribunal has taken into account the applicant's explanation in providing a bogus document as evidence of her identity. As detailed above, the Tribunal has not accepted the applicant's claim that she feared persecution in Albania as credible.

87. The Tribunal is not satisfied that the applicant has a reasonable explanation for providing a bogus document. Accordingly, consistent with s.91WA of the Act, the Tribunal must affirm the decision to refuse to grant the applicant a protection visa.

DECISION

88. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Christopher Smolicz
Member

ATTACHMENT - Extract from *Migration Act 1958*

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.